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What the Wilderness Act Accomplished in Protection of Roadless Areas Within the National Park System

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ESSAY

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What the Wilderness Act Accomplished in Protection of Roadless Areas Within the National Park System

The following Essay gives a narrative and reflective account of the history and protection of the National Park System under the Wilderness Act. Many of the assertions are the author's own; however, citation is provided where necessary. The essay provides a good background for anyone interested in the history of the national park system.

Questions continue to arise over what the Wilderness Act¹ accomplished with respect to lands administered by the National Park Service (NPS). Some feel that the Park Service's Organic Act,² with later amendments, already gave the maximum protection to nature within NPS holdings, making application of the Wilderness Act redundant.

In fact, although the Wilderness Act originated out of dismay over trends affecting roadless areas in the National Forests, concerns about the erosion of roadless blocks within units of the National Park System (NPSys) caused it to be applied to NPS lands, as well. It has come to serve basically as a zoning system for permanently maintaining certain blocks of wildlands free of roads, resorts, or other significant man-made intrusions—a system that limits NPS discretion to allow developments within those blocks.

* Chairman, Sierra Club; J.D., 1961 University of Oregon. The author gratefully acknowledges the role that Wes Henry of the National Park Service played in encouraging him to write this Essay and also thanks Frank Buono and Jonathan Jarvis of the Park Service for their careful review and suggestions.

¹ Wilderness Act, 16 U.S.C. §§ 1131-36 (1994).

² National Park Service Organic Act, 16 U.S.C. §§ 1, 2-4, 22, 43 (1994).

This Essay discusses the history of congressional and NPS perceptions of wilderness during this century as reflected in changing statutes and management policies. Part I considers early NPS traditions, later trends, and mandates and practice under the Organic Act. Part II discusses the Wilderness Act and compares it to the NPS Organic Act. Part III addresses the 1978 Amendment to the Organic Act and ways that NPS should be encouraged to manage wilderness lands under their care.

I

THE NATIONAL PARK SERVICE: ITS FIRST HALF CENTURY

Neither the early traditions nor later trends of the Park Service provided clear expectations about the future disposition of roadless lands within the system. No one disputed the authority of the Park Service to maintain roadless areas if it chose, but the history showed that such was not always its choice.

A. *Uncertain Traditions*

The early history of the classic national parks revealed a desire to make them more accessible and to provide resorts. Yosemite came to the Park Service with roads and resorts already present in Yosemite Valley, and Yellowstone soon came to have them running through its heartland. By the 1920s, Stephen Mather—the Service's first director—came to recognize that parts of the Yellowstone country "should be maintained as a wilderness"³ and that Yosemite policy ought to leave "large areas of high mountain country wholly undeveloped."⁴

But these statements were a reaction to an unfolding history of developing parks. There was nothing in the early history of managing parks to suggest that wilderness would have a secure place. Indeed, Interior Secretary Franklin Lane's⁵ early letter of gui-

³ See ALFRED RUNTE, NATIONAL PARKS: THE AMERICAN EXPERIENCE 122 (Univ. of Neb. Press, 1979); *Motorboats vs. Yellowstone Lake Wilderness*, SIERRA CLUB BULL., June 1960, at 12 (in the early 1960s efforts were pressed to maintain the wilderness mood of the southern arms of Yellowstone Lake by closing them to motor boats).

⁴ RUNTE, *supra* note 3, at 123.

⁵ Secretary of Interior, 1913-1920.

dance emphasized providing public access "by any means practicable."⁶

The whole history of changing patterns of access showed the mounting pressure on wilderness.⁷ Only small numbers of people were brought in by stage coach. More were brought in by railroads, but most of the lines ended near park boundaries; there were no deep intrusions into wilderness. However, the automobile changed all of that. Roads were pushed into places railroads never penetrated. When wagon roads were rebuilt as highways, they fed a spreading system of roadways. Mather's promotion of roads in the 1920s unleashed forces that changed the face of the park system.⁸

B. Later Trends

Concerns about road building intensified in the 1930s as the Park Service undertook the job of building parkways. While these were mainly in the east, some saw this as the wave of the future. The Civilian Conservation Corps was also actively involved in building structures in parks. Patterns of resort development were particularly common in state parks. The spread of rustic chalets created a sense that these belonged everywhere.⁹ They began to appear in backcountry in Yosemite, Sequoia, and Glacier national parks. When Horace Albright left the directorship of the NPS in 1933, he urged his successors: "Oppose with all . . . strength and power proposals to penetrate . . . wilderness regions with motorways and other symbols of modern mechanization."¹⁰

⁶ See JENKS CAMERON, *THE NATIONAL PARK SERVICE* 17 (1922) (Secretary Lane had preceded this statement with the general declaration that "[e]very activity of the Service is subordinate . . . to faithfully preserving the parks . . . in essentially their natural state"); Frank Buono, *The Wilderness Act of 1964: Its Relationship to the NPS Organic Act*, 11:1 *GEORGE WRIGHT F.* 49-50 (1994); see also JOHN HENDEE, ET AL., *WILDERNESS MANAGEMENT* 32 (1990).

⁷ HENDEE, ET AL., *supra* note 6, at 167, 168.

⁸ Mather was concerned with building up visitation to parks to develop a political constituency for the Park Service. Toward that end he promoted opening of roads leading into parks. He helped establish the national Park-to-Park Association to develop roads linking parks. He took members of Congress on visits to parks, making sure they saw the bad conditions of roads, and pursued construction of projects such as the Going-to-the-Sun Highway in Glacier National Park. See DOUGLAS H. STRONG, *THE CONSERVATIONISTS* 133-34 (1971).

⁹ For discussion of the revolt against resorts, see RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* 326 (3d ed. 1982).

¹⁰ Buono, *supra* note 6, at 50.

During the 1930s, the idea of establishing parks with a wilderness character was also introduced. To compete with the Forest Service and alleviate the anxieties of outdoor groups and dude ranchers, Interior Secretary Ickes worked to make sure that many newly established parks would be permanently managed as wilderness. These wilderness parks included Everglades, Kings Canyon, Olympic, and Isle Royale. Sometimes the wilderness mandate was included in authorizing statutes.¹¹ However, these commitments were limited to given parks and arose out of their legislative histories. Other parks then established, such as Big Bend, did not include any commitment to wilderness.

By the 1950s, interest in development within the parks was revived with Mission 66.¹² For over a decade, the drumbeat of development was heard in most parks, with new visitor centers, parking lots, and improvements appearing ubiquitously. Boosters pushed for a new hotel and ski developments in Rainier National Park. Ski developments were also proposed in Olympic, Rocky Mountain, and Crater Lake national parks.¹³ Wilderness in Sequoia park was threatened by proposals to spray insecticides on forests suffering from infestations.¹⁴ Salvage logging in Olympic National Park also generated controversy.¹⁵ During George Hartzog's tenure as Director of the Service,¹⁶ he proposed building tramways to various high points (e.g., in Yosemite Valley and the North Cascades), as well as something he called "motor nature trails." A controversial drive-up lookout was built in Great Smoky Mountains National Park, and a struggle broke out over a proposal to build a new highway across the mountains in that park. The Park Service lost support for managing the Oregon Dunes because of its advocacy of constructing a road down the beach (a similar controversy broke out over the building of a

¹¹ See HENDEE, ET AL., *supra* note 6, at 32; see also RUNTE, *supra* note 3, at 142.

¹² Mission 66 was launched in the mid-1950s to renovate decayed facilities dating from the 1930s and to build new facilities in parks to catch up with rising levels of use in the post-war period. It also led to over-development. See SAMUEL P. HAYS, *BEAUTY, HEALTH AND PERMANENCE: ENVIRONMENTAL POLITICS IN THE UNITED STATES, 1955-1985*, 117, 129, 386 (1987).

¹³ See *FWOC Debates—Should Man or Nature Manage Wilderness?*, SIERRA CLUB BULL., Sept. 1960, at 11.

¹⁴ See Robert V. Golden, *Wilderness Management*, SIERRA CLUB BULL., Mar.-Apr. 1962, at 7.

¹⁵ See *National Park Timber Policy*, 21:58 LIVING WILDERNESS, Fall-Winter 1956-57, at 42-49.

¹⁶ George B. Hartzog, Jr. was Director of the National Park Service from 1964 to 1972.

beach road in Assateague National Seashore, but that one was mandated statutorily).¹⁷ Later controversies developed over the use of motors on watercraft running rivers through parks, such as in the Grand Canyon.

During the 1950s and 1960s, anxiety increased over the permanence of wilderness within national parks. This feeling grew out of proposals to build dams within several units of the system including, Dinosaur, Rainbow Bridge, and Grand Canyon. Fortunately, in two out of three of these cases, conservationists defeated the proposals. This concern did not arise out of the Park Service's use of discretion; however, it did reinforce the belief that the nation needed to intensify its commitment to protect nature within parks.¹⁸ Furthermore, critics feel the Park Service did not do all it could to resist incursions in places such as Dinosaur.¹⁹

C. Legal Mandates and Practice

The 1916 Organic Act gave no clear guidance on the question of how much wilderness should be protected. Instead, it explained that the scenic, natural, and historic objects of the parks were to be conserved while providing for public enjoyment by means that would leave them unimpaired for the future.²⁰ This mandate was administratively interpreted to give the Park Service discretion to determine how to strike the balance between preserving wilderness and providing facilities that were accessible by popular means of transport. Limits were perceived on Park Service discretion only to the extent that it could not authorize nonconforming developments such as a dam at Hetch Hetchy. They were free to consider roads, resorts, campgrounds, and amusements (though obviously extremes in development would do violence to the Organic Act's mandate).

By the 1930s some felt that more legal guidance was needed. In 1939, legislation was introduced to authorize the President to declare wilderness areas in national parks and monuments.²¹

¹⁷ See WILLIAM C. EVERHART, *THE NATIONAL PARK SERVICE* 82 (1972).

¹⁸ See, e.g., *Uneasy Chair: An Open Letter to Secretary Udall*, *SIERRA CLUB BULL.*, Mar.-Apr. 1962, at 2.

¹⁹ See Susan Rhoades Neel, *Newton Drury and the Echo-Park Dam Controversy*, *FOREST AND CONSERVATION HIST.* 56-66 (Apr. 1994).

²⁰ 16 U.S.C. § 1 (1994).

²¹ JAMES GLOVER, *A WILDERNESS ORIGINAL: THE LIFE OF BOB MARSHALL* 254 (1986).

Robert Marshall—the most prominent wilderness champion of the time—backed this bill; however, it did not pass. Instead, the bill set in motion efforts that eventually culminated with passage of the Wilderness Act in 1964. Moreover, advocates for nature came to realize that the National Park Service was not armed legally to resist many nonconforming incursions, such as dams and mining, because of exceptions in the authorizing statutes.²²

The exact sequence of events that prompted promoters of the Wilderness Act to put the National Park Service under its mandates is not clear. However, wilderness supporters complained about threats to park wilderness in the early 1950s. In 1953, the Izaak Walton League of America adopted a policy stating: “[t]here should be no material extension of road or highway systems in the major parks; these should be held to essentials and the bulk of each reserved area kept in primeval condition so far as possible.”²³ A study by Dr. James P. Gilligan in 1953 also foresaw shrinking zones of wilderness within units of the National Park System due to “the unrelenting pressures of mass use”²⁴ He felt the Park Service would be unable to limit visitations “until every possible means of providing accommodations is exhausted.”²⁵

A lead editorial in the Wilderness Society’s journal in 1954 lamented that too many see national parks as simply playgrounds for outdoor recreation. The editorial raised the possibility of “more specific protection of areas of wilderness within the parks” or “setting these [areas] aside from areas of development.”²⁶

The immediate impetus to include the Park System under the Act seems to have been recommendations of the Outdoor Recreation Resources Review Commission.²⁷ It suggested a system for classifying outdoor recreation areas which specifically included a

²² See, e.g., THE WILDLAND RESEARCH CTR, WILDERNESS AND RECREATION—A REPORT ON RESOURCES, VALUES, AND PROBLEMS 308-10 (Outdoor Recreation Resources Review Commission Study Report 3, 1962).

²³ 18:44 LIVING WILDERNESS, Spring 1953, at 33.

²⁴ James P. Gilligan, *Wilderness in a Democracy*, 20:52 LIVING WILDERNESS, Spring-Summer 1955, at 27.

²⁵ *Id.*

²⁶ *Our National Parks*, 19:51 LIVING WILDERNESS, Winter 1954-55, inside cover.

²⁷ The Commission was appointed by president Dwight D. Eisenhower and operated between 1959 and 1962. Its recommendations led to the establishment of a Bureau of Outdoor Recreation and more funding for parks in the east. See STEWART L. UDALL, *THE QUIET CRISIS* 180 (1963).

category for areas with primitive conditions.²⁸ It identified areas with these values in various parts of the federal estate, including national parks, and further suggested that Congress "take action to assure the permanent reservation of these and similar suitable areas in national forests, national parks, wildlife refuges, and other lands in Federal ownership."²⁹

In any event, Howard Zahniser, then the Executive Director of the Wilderness Society, conferred in 1955 with representatives of various other conservation organizations on a draft of a bill, which Senator Hubert Humphrey introduced on June 7, 1956.³⁰ That bill required, in part, the "designation of wilderness zones in units of the National Park System." Three other such designations were to be in units of the national forests and wildlife refuges, and within Indian reservations. (Indian reservations were later dropped from the bill.)³¹

However, the National Park Service did not want to be included within the scope of the Wilderness Act. In 1957, then Director Conrad Wirth testified against inclusion. He argued that wilderness was already adequately protected and that "conflicts and dissension" would arise over the use of the wilderness.³² Even after the legislation became law, George Hartzog, when he was director, warned that "to assume that the Wilderness Act establishes new standards and new criteria for national park wilderness, replacing the old and time-tested wilderness standards and criteria of the service, would jeopardize the whole national park concept."³³

²⁸ The commission suggested a five-fold system for classifying all recreation lands, from Class I for mass recreation areas, to Class V for primitive areas. OUTDOOR RECREATION RESOURCES REVIEW COMMISSION, OUTDOOR RECREATION FOR AMERICA 96-97 (1962).

²⁹ See 109 CONG. REC. 5866, 5899 (Apr. 8, 1963) (statement of Sen. Metcalf).

³⁰ See Michael McCloskey, *The Wilderness Act of 1964: Its Background and Meaning*, 45 OR. L. REV. 288, 298 n.40 (June 1966) (citing S.4013 84th Cong., 2d Sess. (1956)).

³¹ *Id.*

³² Ronald Strickland, *Ten years of Congressional Review Under the Wilderness Act of 1964*, ch. V (1976) (unpublished Ph.D. dissertation, Georgetown University, microformed on Xerox University Microfilms, 76-26, 798) (quoting *National Wilderness Preservation Act, 1957: Hearings on S. 1176 Before the Senate Comm. On Interior and Insular Affairs*, 85th Cong., 1st Sess. 107 (1957) (statement of Conrad Wirth, Director, National Park Service)).

³³ *Id.* at 132; see also WILDERNESS AND THE QUALITY OF LIFE 17 (Maxine McCloskey & James P. Gilligan eds., 1969).

II

THE WILDERNESS ACT OF 1964: ITS EFFECTS IN THE
NATIONAL PARK SYSTEM

While the Wilderness Act was designed primarily to address conditions within national forests, the Act also clearly contemplates its application to the National Park System. Sections 3(c) and (d) and 4(a) apply it specifically to the Secretary of the Interior and the Park System.³⁴ Section 4(a)(3) states that designation of units in the Park System as wilderness "shall in no manner lower the standards evolved for the use and preservation" of these units under various laws.³⁵ This provision was designed to clarify³⁶ that compromises with wilderness quality elsewhere in the Act, which were designed to deal with conflicts in the national forests, did not apply to the agencies such as the National Park Service. The Solicitor of the Department addressed this question in an opinion issued in 1967 saying "it is obvious that Congress could only have intended by the Wilderness Act that wilderness designation of National Park System lands should, if anything, result in a higher, rather than a lower, standard of unimpaired preservation."³⁷ Another provision of the Act also made it clear that the Secretary of the Interior can continue to manage areas within the national parks as a kind of *de facto* wilderness. Section 3(c) states that "[n]othing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system."³⁸

³⁴ 16 U.S.C. §§ 1132(c), (d), 1133(a) (1994).

³⁵ 16 U.S.C. § 1133(a)(3).

³⁶ Section 4(a) of the Act contains a set of disclaimers designed to reassure various constituencies that certain authorities were not being diluted. 16 U.S.C. § 1133(a). The longest of these, found in subsection (a)(3), deals with the National Park Service. This subsection was probably not necessary because the plain wording of subsection (d), setting forth special provisions, makes it clear which of the special dispensations for non-conforming activities applies to each Department and its Secretary and to which agencies. Almost all of them apply only to the national forests (except subsection 6 [16 U.S.C. § 1133(d)(5)] dealing with commercial services), and the Secretary of the Interior is rarely mentioned.

³⁷ The Wilderness Act, 74 Interior Dec. M-36702, 97 at 100 (1967).

³⁸ 16 U.S.C. § 1132(c).

A. Types of Added Protection

In general, designation of wilderness zones within park units has the following legal effects within the zones (under section 4(c)), which operate as restrictions on administrative discretion available under the 1916 Organic Act:³⁹

- (1) no permanent roads are allowed (subject to an exception to protect vested private rights);⁴⁰
- (2) no commercial enterprise is allowed (subject to the exception stated above); however, commercial services (e.g., guide services) may be permitted to the extent necessary for realizing purposes of wilderness recreation (section 4(d)(6));⁴¹
- (3) no temporary road is allowed (this is not subject to the above exception, but this provision is subject to different restrictions, as are the items below, viz: "except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area)");⁴²
- (4) no motor vehicles, motorized equipment, or motorboats may be used (incidentally, the pre-existing use exception for the Forest Service does not apply to Interior Department units);⁴³

³⁹ 16 U.S.C. § 1133(c).

⁴⁰ Current regulations on NPS wilderness specify that pre-existing old roads are to be removed and the impacted land restored; *see generally* U.S. DEPT OF THE INTERIOR, MANAGEMENT POLICIES (1988) at 6:5 [hereinafter MANAGEMENT POLICIES].

⁴¹ 16 U.S.C. § 1133(d)(5); *see* MANAGEMENT POLICIES, *supra* note 40, at 6:8 (current regulations permit services by outfitters in wilderness if necessary and appropriate and consistent with wilderness objectives. However, they are not allowed to construct facilities for their activity within wilderness, though they can use pack stock); MANAGEMENT POLICIES, *supra* note 40, at 6:9 (livestock can be moved along stock driveways within wilderness, or cattle grazed there, only when authorized explicitly by Congress; any facilities constructed must be compatible with wilderness).

⁴² 16 U.S.C. § 1133(c).

⁴³ MANAGEMENT POLICIES, *supra* note 40, at 6:5 (current regulations permit temporary access by vehicles only "to meet the minimum requirements" of emergency situations); *see* MANAGEMENT POLICIES, *supra* note 40, at 6:8 (outside of Alaska, the regulations prohibit use of motor vehicles and bicycles by the public in wilderness other than in emergencies; hand-propelled watercraft are allowed); MANAGEMENT POLICIES, *supra* note 40, at 6:4 (administrative use of motorized equipment and vehicles is only permitted in emergency situations involving human health or safety, or the protection of wilderness values, or where such equipment conforms to the "minimum tool" concept; where compromises are unavoidable, only localized, short-term impacts are acceptable); MANAGEMENT POLICIES, *supra* note 40, at 6:8 (with regard to patterns of motorboat or aircraft use established prior to wilderness designation, the regulations allow such use to continue only where it is "specifically authorized by Congress and determined . . . to be compatible with the . . . values of the particular wilderness area involved").

- (5) aircraft are not permitted to land within such areas;⁴⁴
- (6) no other form of mechanical transport is allowed (this probably means things such as wagons, bicycles, etc.);⁴⁵ and
- (7) no structures or installations can be maintained within such areas.⁴⁶

Notwithstanding the clear wording of the Act barring structures and installations, administrative practice and tradition have allowed trails, signs, footbridges, and slight campsite improvements for backpackers, as well as the placement of unobtrusive scientific monitoring equipment. These modifications are justified as necessary to serve the recreational and scientific purposes of the Act. Furthermore, nothing in the legislative history suggests that the Act's sponsors intended to eliminate provision of such facilities, which were a long standing practice.

Administrative regulations now provide that trails and bridges can be built when they are needed either to protect the wilderness resource or to obviate significant safety hazards.⁴⁷ These regulations allow campsites to have a site marker, tent site, fire ring, food storage device, and a toilet (when required for health and safety or to protect the wilderness resource).⁴⁸ No new shelters can be constructed (though existing ones can be continued if necessary to achieve a wilderness objective) and picnic tables are not permitted.⁴⁹ Signs must be limited to those necessary for

⁴⁴ See MANAGEMENT POLICIES, *supra* note 40, at 6:6 (while current regulations do not allow construction of any permanent landing facilities for aircraft, temporary ones can be constructed in emergencies to meet minimum requirements, provided the sites are restored afterwards. No landing sites or improvements are allowed to facilitate administrative use of aircraft).

⁴⁵ The current regulations make possession of a bicycle in wilderness within parks a per se violation under 36 C.F.R. § 4.30(d)(1); see also MANAGEMENT POLICIES, *supra* note 40, at 6:8.

⁴⁶ See MANAGEMENT POLICIES, *supra* note 40, at 6:5 (a limited exception to these restrictions is set forth in the regulations for administrative use where such use is authorized in management plans for the wilderness area for structures such as patrol cabins, stock corrals, and storage facilities. Moreover, such use must be necessary to meet wilderness management objectives and cannot be maintained for convenience or economy of effort); MANAGEMENT POLICIES, *supra* note 40, at 6:5 (other agencies will be allowed to maintain nonconforming installations, such as repeater stations, antennae, and lookouts, within wilderness areas only if these facilities carry out essential administrative functions and represent the minimum facilities required).

⁴⁷ MANAGEMENT POLICIES, *supra* note 40, at 6:6.

⁴⁸ MANAGEMENT POLICIES, *supra* note 40.

⁴⁹ MANAGEMENT POLICIES, *supra* note 40 (existing shelters can be continued if they are necessary to achieve a wilderness objective).

public safety and must be of minimum size.⁵⁰ Furthermore, scientific monitoring equipment is allowed if the information being obtained is essential and cannot be obtained outside of the wilderness; the size of the equipment must be in conformance with the "minimum tool" concept and the equipment must be removed when it is no longer needed.⁵¹

Various statutes providing for the preservation of historic structures have also been invoked to justify maintenance of buildings with historic value.⁵² Section 2(c)(4) of the Wilderness Act does contemplate that areas with historic values may be included within designated wilderness.⁵³ Current regulations permit such structures to be protected in ways that are consistent with the preservation of the wilderness character of the area.⁵⁴

Questions have also arisen with respect to archaeological sites within wilderness. The House Committee report for the El Malpais National Monument asserts the Committee's belief that within Park Service-administered wilderness it is permissible to undertake "active measures for the conservation and interpretation of archaeological and historical resources, as well as the scientific use of such resources."⁵⁵ However, the language of the statute only implies that wilderness and archaeological resources can coexist; it does not address the question of active measures.

Congress explicitly authorized protection and interpretation of archaeological resources within the River of No Return Wilderness in the Central Idaho Wilderness Act of 1980, but only "insofar as these activities are compatible with the preservation of the values for which the wilderness and wild and scenic river were designated to protect."⁵⁶ Moreover, that Act only applies to the Forest Service.⁵⁷ Current regulations of the Park Service only permit means of maintaining such resources that are consistent with preservation of the wilderness character of the area. For example, burial plots and memorial plaques can be maintained,

⁵⁰ MANAGEMENT POLICIES, *supra* note 40.

⁵¹ MANAGEMENT POLICIES, *supra* note 40, at 6:7.

⁵² E.g., National Historic Preservation Act of 1966, 16 U.S.C. § 470(f) (1994).

⁵³ 16 U.S.C. § 1131(c)(4).

⁵⁴ MANAGEMENT POLICIES, *supra* note 40.

⁵⁵ H.R. REP. NO. 116, 100th Cong., 1st Sess. 12 (1987) (emphasis added).

⁵⁶ Pub. L. No. 96-312, 94 Stat. 951, § 8(a)(2) (July 23, 1980).

⁵⁷ See *id.* §§ 3, 4.

but no additions are allowed. Only access by non-motorized means is permitted.⁵⁸

The regulations also provide some leeway to accommodate research activity in wilderness. To be permitted, research activity must: (1) have no alternative outside of the wilderness; (2) be authorized under federal law and regulation; and (3) limit any foreseeable adverse effects in scope and time as necessary for the research and not interfere with wilderness use over a "broad area or long duration."⁵⁹ While some preexisting uses are protected, no expansion nor renewal is permitted of rights-of-way for either utility lines or motor vehicles. Use of motor vehicles is to be limited and phased out where possible.⁶⁰

B. Contrast with the Organic Act

Under the Organic Act, almost all of the impermissible activities enumerated above can be permitted in some form within park units. Obviously commercial and extractive exploitation of natural resources would not be allowed, but commercial services for visitors are provided by concessionaires. Both permanent and temporary roads are maintained, as well as various structures and installations (such as campground facilities), and use of various types of motor vehicles is allowed in selected places. All of these kinds of facilities and activities can be seen in places such as the South Rim of the Grand Canyon, in Yosemite Valley, and in Yellowstone National Park. They have been allowed under the Organic Act, but similar development cannot take place within zones set aside by Congress under the Wilderness Act.

The clearest examples of the changes resulting from the Wilderness Act can be seen in the North Cascades National Park. Prior to the 1986 Washington Parks Wilderness Act, the Park Service followed a 1972 master plan that called for various tramways to be built into the fragile subalpine zones of the park, as well as a new road to the head of Ross Lake and some new ski areas in the Ross Lake National Recreation Area. All of these plans were dropped once the wilderness designation was bestowed.

⁵⁸ MANAGEMENT POLICIES, *supra* note 40.

⁵⁹ MANAGEMENT POLICIES, *supra* note 40, at 6:6-7.

⁶⁰ MANAGEMENT POLICIES, *supra* note 40, at 6:2, 6:9.

Thus, the Wilderness Act serves both as a commitment to maintain wilderness and as a legal restriction against permitting debarred activities.

C. Empowering Provisions

The Wilderness Act also makes the administering agency responsible for maintaining the wilderness character of the area designated as legal wilderness.⁶¹ Under this more general provision, the Park Service may also acquire additional authority to deal with nonconforming uses within units where all commercial uses have not been extinguished statutorily. For instance, the wilderness overlay by Congress may override continued dispensations for grazing within a given park if they are discretionary and no private rights have vested. Interestingly enough, the special provisions of the Act governing inholdings do not apply to the Secretary of the Interior.⁶² Nor do most of these provisions apply to the Act's exceptions for continued commercial use and development.⁶³

D. Special Provisions

It is not entirely clear whether the Wilderness Act restricts various kinds of management practices, such as predator control, fish stocking, and elimination of exotic species. The obligation imposed by section 4(b) to maintain wilderness character might rule out the first two, but not the last.⁶⁴ Moreover, section 4(d)(1) does authorize the Secretary of the Interior to undertake necessary measures within wilderness areas to control fire, insects, and disease.⁶⁵ The degree to which such measures are constrained by the word "necessary" is probably subject to legal debate. NPS wilderness management criteria have limited disease control to "disaster conditions which threaten whole ecosystems."⁶⁶

Congress shed some light on the question of fire control in the Endangered American Wilderness Act of 1978 in a special provi-

⁶¹ 16 U.S.C. § 1133(b).

⁶² 16 U.S.C. § 1134 (only the Secretary of Agriculture is mentioned in the "state and private lands within wilderness" section, and its provisions are only applied to wilderness within national forests).

⁶³ See 16 U.S.C. § 1133(d).

⁶⁴ 16 U.S.C. § 1133(b).

⁶⁵ 16 U.S.C. § 1133(d)(1).

⁶⁶ See 1966 NPS Wilderness Management Criteria 3.

sion for the Ventana and Santa Lucia Wilderness areas administered by the Forest Service.⁶⁷ For those areas, Congress authorized the Forest Service to "take whatever appropriate actions are necessary for fire prevention and watershed protection, including, but not limited to, acceptable fire presuppression and fire suppression measures and techniques."⁶⁸ Presumably, Congress felt it had to make these special dispensations because the standard wording of the Wilderness Act did not permit administrators to go this far. This line of reasoning would be most pertinent to presuppression activities, which might involve reductions of fuel loads in advance of the outbreak of fire. This suggests that administering agencies, including the Park Service, are not generally allowed to use presuppression strategies unless special dispensations are provided. Park Service regulations issued in 1988 are ambiguous with respect to how much fire suppression is appropriate in wilderness. They limit the means of suppression to the minimum tool concept and stress minimizing lasting impacts; however, prescribed burning is not disallowed.⁶⁹

The largest share of the Park Service's wilderness estate is found in Alaska. It was set aside under the provisions of the Alaska National Interest Lands Conservation Act of 1980.⁷⁰ For that estate, Congress made special modifications of the wilderness formula to recognize the more challenging conditions prevailing there, as well as to accommodate subsistence activities by rural residents in and around park units. More than twenty modifications were made including provisions allowing motorized access to and from homesites and villages and for recreational purposes, access across wilderness zones to mining claims and other inholdings, and various subsistence uses such as the taking of fish and wildlife and gathering firewood and logs for building purposes. There are also provisions for maintaining navigation aids (air and water), communication sites, and facilities for monitoring and researching weather, climate, and fisheries. However,

⁶⁷ Endangered American Wilderness Act of 1978, Pub. L. No. 95-237 §§ 2(c) & (d), 92 Stat. 40-41 (codified at 16 U.S.C. § 1132 note).

⁶⁸ *Id.*

⁶⁹ See MANAGEMENT POLICIES, *supra* note 40, at 6:7. However, the section on fire management in wilderness is supposed to be under review for possible modification.

⁷⁰ Pub. L. No. 96-487, 94 Stat. 2371 (codified at 16 U.S.C. § 3101-33 (1994)). In particular, see § 3203.

these special dispensations for Alaska do not apply to Park Service wilderness in the main body of the United States.

E. Administrative History

The Park Service was never enthusiastic about having the Wilderness Act apply to its holdings.⁷¹ Following the passage of the Act, the Service was slow to pursue studies and make wilderness recommendations, and Congress has been slow to act on them.⁷² The Park Service also tended to limit the size of blocks recommended for wilderness.⁷³ Often zones recommended were set back considerable distances from roads and developed areas. Wilderness advocates tended to believe that wilderness boundaries should be set close to such developments to assure that roads and developments would not spread in the future.⁷⁴ These groups also opposed excising areas subject to nonconforming uses, such as inholdings, mineral claims, and backcountry chalets, or areas burdened with problems such as grazing and power lines. They suggested the concept of "escrow wilderness" to avoid going back to Congress when the nonconforming developments were removed. Both the Park Service and the Forest Service advanced notions early on of "wilderness purity" to limit the size of areas recommended as wilderness. Wilderness advocates disagreed. Park Service resistance along these lines collapsed in 1972 when then Assistant Interior Secretary Nathaniel Reed is-

⁷¹ See, e.g., NATIONAL PARKS CENTENNIAL COMMISSION, PRESERVING A HERITAGE: FINAL REPORT TO THE PRESIDENT AND CONGRESS 118-21 (1973) (recommendations on wilderness in parks).

⁷² As of June 1994, there were 39.1 million acres of designated wilderness within the National Park System; the President has recommended 7.1 million more acres of parkland for addition to the National Wilderness Preservation System, and wilderness enthusiasts hope that as many as twenty-five million more acres will be added. Oral communication with the Wilderness Society (June 1994), which maintains records on current figures. See also PRESIDENT'S WILDERNESS REPORT TO CONGRESS 6 (Mar. 28, 1990) for figures which are similar.

⁷³ See, e.g., FINAL ENVIRONMENTAL STATEMENT ON PROPOSED WILDERNESS CLASSIFICATION FOR BIG BEND NATIONAL PARK, TEXAS (Jan. 8, 1975), exhibit A.; WILDERNESS RECOMMENDATION FOR CAPITOL REEF NATIONAL PARK, UTAH (Nov. 1974), exhibit A.

⁷⁴ The idea of escrow wilderness is now recognized within the administrative guidelines of the Park Service (following Congressional practice). Under the heading of "Potential Wilderness," these are described as areas disqualified because of "temporary incompatible conditions," which when authorized by Congress, can become "designated wilderness upon the Secretary's determination . . . that they have met the qualifications for designation" at a subsequent date; see MANAGEMENT POLICIES, *supra* note 40, at 6:3.

sued new Departmental Guidelines for Wilderness Proposals. This was done in response to pressure from Senator Frank Church who chaired the Senate subcommittee with jurisdiction on the subject.⁷⁵

This history casts light on the role that the Wilderness Act plays in limiting administrative discretion vis-à-vis future development options in park units.

III

RENEWED MANDATES AND OPPORTUNITIES

A. 1978 Amendment to the Organic Act

In 1978, in connection with the expansion of the Redwood National Park, Congress amended the Organic Act. The essential new language provides that management of the various areas of the National Park System "shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."⁷⁶

Courts have since construed this amendment as giving the Park Service a stronger mandate to protect parks in *Sierra Club v. Andrus* and *National Rifle Assn. v. Potter*.⁷⁷ However, these cases did not really turn on the kinds of questions that arise with application of the Wilderness Act. The *Sierra Club* case dealt with the Secretary's duty to protect Grand Canyon National Park by securing it from external threats that might deplete its water supply. The amendment itself arose in connection with a similar problem—protecting the Redwood National Park from external threats in connection with nearby logging. These cases establish an affirmative duty of the Secretary to be active in finding answers to external threats to park resources. The *NRA* case affirmed the authority of the Secretary to disallow hunting and trapping within units of the National Park System. The *NRA*

⁷⁵ The Departmental Guidelines were issued June 24, 1972. See Strickland, *supra* note 32, at 135.

⁷⁶ Pub. L. No. 95-250, Title 1, § 101(b), 92 Stat. 166 (Mar. 27, 1978) (codified at 16 U.S.C. § 1a-1).

⁷⁷ *Sierra Club v. Andrus*, 487 F. Supp. 443, 448 (D.D.C. 1980); *National Rifle Assn. v. Potter*, 628 F. Supp. 903, 906 (D.D.C. 1986); see also Robert B. Keiter, *National Park Protection: Putting the Organic Act to Work*, in *OUR COMMON LANDS: DEFENDING THE NATIONAL PARKS* 76-81 (David Simon ed., 1988).

case also discounted the idea of dual mandates for the National Park System, stating, "[I]n the Organic Act Congress speaks of but a single purpose, namely, conservation."⁷⁸ But neither of these cases squarely faces the issue of whether the Secretary is obliged, under the amended Organic Act, to disallow roads, resorts, and campgrounds.

Moreover, the legislative history of this amendment reveals that it was designed to deal with a different kind of problem. As an outgrowth of the Outdoor Recreation Resources Review Commission in the 1960s, the Park Service had adopted the practice of classifying units of its system as either natural, recreational, or historic units. Once it did that, units tended to be managed more in terms of regulations developed for their particular type than to reflect their own statutes.

There is reason to believe that the 1978 amendment to the Organic Act was intended to put an end to that practice, and indeed these regulations were dropped soon thereafter.⁷⁹ The Service was told to look to the values and purposes for which the various areas were established, and not to use authority under the Organic Act to administer them in a different way. For instance, national seashores should be seen as having important natural values to be conserved rather than simply being viewed as areas to be developed for mass recreation. The Organic Act was now to be read as stressing the idea of the integrity of the system and its having high value as a whole, not that parts of it could be managed just for mass recreation with little emphasis on conservation. But this change of emphasis does not go so far as to remove discretion to build some roads and structures for public enjoyment. Only the Wilderness Act does that.

B. Opportunities

The Park Service should make the most of the fact that it manages statutory wilderness. This represents additional national affirmation of the importance of the area affected. It is part of a national system of wilderness preservation. It is also related to an emerging world system of wilderness areas.⁸⁰ The Park Service should be proud to show visitors that it can offer them wil-

⁷⁸ *National Rifle*, 628 F. Supp. at 909.

⁷⁹ See 51 Fed. Reg. 21,840 (1986) for actions removing the contrary regulations.

⁸⁰ See Michael McCloskey & Vance Martin, *International Laws Governing Wilderness*, J. FORESTRY, Feb. 1993, at 35.

derness with national recognition that is legally protected in perpetuity. This protection may surprise people visiting wilderness zones in National Recreation Areas such as Point Reyes and the North Cascades; they may look upon these areas' importance in a new light.

Moreover, the Park Service and wilderness supporters should drop the term "backcountry" whenever Congress bestows the wilderness designation. It should view the term "wilderness" in a positive light. It evokes connections with a large and powerful literature, which can excite the imagination of users. In contrast, "backcountry" is a less evocative term that merely suggests it is back away from development and is perhaps even deficient in points of interest (it suggests the points of interest lie along roads). The Park Service can use its positive association with wilderness to build stronger ties with groups who can be supportive of park purposes.

Seeing wilderness in park units as part of a larger system should also encourage cooperation with other land management agencies administering adjacent wilderness areas. A block of wilderness straddling agency boundaries should be managed in a coordinated fashion and be seen positively as a resource. The Wilderness Act's emphasis on proactive management should encourage that approach.

CONCLUSION

The Wilderness Act complements the Park Service's basic statutory authority, just as the World Heritage Convention's application does.⁸¹ It adds greater affirmation of the importance of keeping parts of park units in an undeveloped condition. It serves as a permanent zoning device, with national legal sanction, determining where roads and structures will not intrude. Parks with statutory wilderness are insulated from local political pressures to extend roads inappropriately into wildlands.

The need for such zoning arose out of a long history that acknowledged that the automobile and its demands needed to be disciplined in parks. Once Congress finally designates wilderness, a great element of uncertainty is removed from the planning process and park visitors then know they can rely on returning to see pristine areas year after year.

⁸¹ Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, arts. 1 and 2, 27 U.S.T. 37, 1037 U.N.T.S. 15511.